

Department of Health
Rule-making Activity Under Executive Order 10-06
December 10, 2010

On November 17, 2010, Governor Chris Gregoire issued an executive order suspending rule development and adoption. The order was effective immediately and runs through December 31, 2011. In her order, the governor acknowledged the unprecedented economic times for both small businesses and state government. Under the order, all activity on "non-critical" rules is immediately suspended. Rulemaking is allowed to continue if the rule is:

- required by federal or state law or required to maintain federally delegated or authorized programs;
- required by court order;
- necessary to manage budget shortfalls, maintain fund solvency, or for revenue generating activities;
- necessary to protect public health, safety, and welfare or necessary to avoid an immediate threat to the state's natural resources; or
- beneficial to or requested or supported by the regulated entities, local governments, or small businesses that it affects;
- permanent rule making that has previously been covered by an emergency rules;
- expedited rules under RCW 34.05.353.

The Department of Health has completed the review of all current rule-making activity against the exception criteria. Below you will find a list of what rules move ahead and what will be suspended through 2011.

We have heard support from stakeholders for moving ahead on many of our rules. However, some of these rules we found to be "non-critical" at this time and we will suspend, per the Governor's directive, to provide predictability and stability, and minimize the process workload on staff who would otherwise have to participate in the rule-making process. As always, patient safety is my first priority and must guide our decisions.

Thank you for your patience during this time of unprecedented economic stress on all sectors of our state.

The Department of Health will continue work on the rules listed below. Each qualifies under a specific criterion in the exemption guidelines.

RULE-MAKING THAT WILL CONTINUE		
Authority	Rule Title	Exemption Criteria
Board of Osteopathic Medicine and Surgery	Chapter 246-853 WAC - (osteopathic physicians) and Chapter 246-854 WAC - (osteopathic physician assistants), pain management. The Board of Osteopathic Medicine and Surgery is amending the chapter to repeal existing pain management sections and adopt a new section(s) for management of chronic, noncancerous pain.	Implements legislation (ESHB 2876 -2010)
Board of Osteopathic Medicine and Surgery	WAC 246-853-640 - creating a new section for Non-Surgical Medical Cosmetic Procedures (osteopathic physicians) and creating a new section, WAC 246-854-230 - for Non-Surgical Medical Cosmetic Procedures (osteopathic physician assistants).	Necessary to protect public health.
Board of Pharmacy	Title 246 WAC - Adding a new chapter for prescription monitoring program (PMP). The Dept. of Health will develop procedures and enforceable standards for the collection, analysis, and reporting of information on prescribing and dispensing of controlled substances. The PMP will be designed to monitor the prescribing and dispensing of all schedule II, III, IV, and V controlled substances and any additional drugs identified by the Board of Pharmacy as demonstrating a potential for abuse.	Implements legislation (ESSB 5930 -2007)
Board of Pharmacy	Chapter 246-889 WAC - Pharmaceutical - Precursor Substance Control. The Board of Pharmacy (Board) is proposing to create new sections and amend WAC 246-889-070 through -110 as necessary to adopt procedures and enforceable standards for a statewide electronic sales tracking system for nonprescription sales of ephedrine (EPH), pseudoephedrine (PSE), and phenylpropanolamine (PPA).	Implements legislation (E2SHB 2961 -2010)
Board of Pharmacy	Chapter 246-863 WAC - Pharmacists Licensing, and Chapter 246-869 WAC - Pharmacy Licensing. The Board of Pharmacy is considering amending rules to allow additional or alternative procedures that will ensure patients have access to medications when they need them.	Based on Court Order.
Board of Pharmacy	New chapter 246-874 WAC - Pharmaceutical Services - Correctional Pharmacy Standards. The rules will provide clear and enforceable standards for medication storage; drug distribution; drug security; and drug accountability for pharmacies that are operated in whole or part by a correctional facility.	Necessary to protect public health, requested by Department of Corrections (all state prisons) and King County jails.
Board of Pharmacy	Chapter 246-886 WAC - Animal Control - legend drug and WAC 246-887-050, 060 and 070 rules regulating to the possession, administration and storage of sodium pentobarbital.	Necessary to protect public health, beneficial to or requested by regulated entity.

RULE-MAKING THAT WILL CONTINUE

Authority	Rule Title	Exemption Criteria
Board of Pharmacy	WAC 246-887-280 Approved controlled substances. The Board of Pharmacy (BOP) is considering approving Butorphanol, Midazolam, and Fentanyl for use by authorized individuals of the Washington Department of Fish and Wildlife (WDFW) for wildlife management chemical capture programs.	Necessary to protect public health, requested by regulated entity, impacts internal government operations.
Board of Pharmacy	WAC 246-856-030 – (Board of Pharmacy) Repeal Delegation of authority to initiate investigations.	Impacts internal government operations only.
Chiropractic Quality Assurance Commission	WAC 246-808-133 Chiropractic Quality Assurance Commission. Adding a new section to issue a temporary practice permit while chiropractic applicants are waiting for completion of the national background check.	Implements legislation (4 SHB 1103 -2008).
Dental Quality Assurance Commission	Chapter 246-817 WAC - Pain Management. The Dental Quality Assurance Commission is amending Chapter 246-817 WAC to add new section(s) for management of chronic, noncancer pain.	Implements legislation (ESHB 2876 -2010)
Dental Quality Assurance Commission	WAC 246-817-220 - Inactive Credential - creating a new section to establish an inactive dentist license status.	Beneficial to or requested by regulated entity.
DOH	Chapter 246-272B WAC - Large On-site Sewage System (LOSS) Regulations.	Implements legislation, beneficial to or requested by regulated entity.
DOH	Chapter 246-292 WAC - Waterworks Operator Certification, is being amended to incorporate recent statutory changes. The department will also consider a chapter update that may include addressing operational issues and incorporating long-standing guidelines into the rule.	Implements legislation, beneficial to or requested by regulated entity.
DOH	Chapter 246-296 WAC - Drinking Water State Revolving Fund Loan Program (DWSRF).	Necessary to meet federal requirements, beneficial to or requested by regulated entity, result of an emergency rule.
DOH	Chapter 246-225A WAC Rules & Regulations - Radiation Safety and Diagnostic Imaging Quality Standards for Dental Facilities. - - Handheld devices	Benefit to regulated community.
DOH	Chapter 246-221 WAC - Radiation Protection Standards, Chapter 246-231 WAC - Packaging and Transportation of Radioactive Material, Chapter 246-240 WAC - Radiation Protection - Medical Use of Radioactive Material.	Federal requirement.
DOH	WAC 246-220-010, Definitions, Radiation Protection – General Provisions, WAC 246-249-010, Definitions, Radioactive Waste - Use of the Commercial Disposal Site, WAC 246-249-090, Transfer for Disposal and Manifests, Radioactive Waste - Use of the Commercial Disposal Site, WAC 246-250-010, Definitions, Radioactive Waste - Licensing Land Disposal.	Federal requirement.

RULE-MAKING THAT WILL CONTINUE

Authority	Rule Title	Exemption Criteria
DOH	Chapter 246-254-053 WAC - Radiation machine facility registration. Proposed <u>reduction</u> in x-ray registration fees.	Beneficial to or requested by regulated entity.
DOH	Chapter 246-274 WAC - creating a new chapter for reuse of greywater, and subsections addressing greywater reuse outside the building for subsurface dispersal and irrigation.	Implements legislation.
DOH	Chapter 246-272 WAC, Wastewater and Reclaimed Water Use Fees - consolidating the on-site sewage system additives fee.	Benefit to regulated community.
DOH	Chapter 246-562 WAC, J-1 Physician Visa Waiver regulations.	Necessary to meet federal requirements.
DOH	New chapter 246-XXX WAC - relating to certification of animal massage practitioners.	Implements legislation.
DOH	Chapter 246-802 WAC - amending acupuncturists rules to reflect new East Asian medicine practitioner law.	Implements legislation (SSB 6280 -2010)
DOH	Chapter 246-337 WAC - Residential treatment facility (RTF) - updating the rules to reflect federal and state regulatory changes and current business and professional practices.	Necessary to meet federal requirements.
DOH	Chapter 246-926 WAC - amending and adding new sections for licensure requirements for cardiovascular invasive specialists.	Implements legislation.
DOH	WAC 246-976-001 through -400, -890, -920, and -950--EMS and Trauma System Prehospital rules and standards for training, licensure and verification, and prehospital system administration.	Necessary to meet federal requirements, implements legislation, necessary to manage budget shortfalls, protects public health, beneficial to and requested by regulated entity, impacts internal government operations.
Examining Board of Psychology	WAC 246-924-485 – (Psychology Board) Repeal delegation of authority to initiate investigations.	Impacts internal government operations only.
Medical Quality Assurance Commission	Chapter 246-919 WAC - (physicians) and Chapter 246-918 WAC - (physician assistants). The Medical Quality Assurance Commission is amending Chapter 246-919 WAC to repeal existing pain management sections, and to adopt new section(s) in Chapters 246-919 and 246-918 WAC for management of chronic, noncancer pain.	Implements legislation (ESHB 2876 -2010).
Medical Quality Assurance Commission	Amending WAC 246-919-480 Retired active credential, WAC 246-919-010 Definitions, and WAC 246-919-421(4) (repeal) Renewal and continuing medical education cycle revision.	Implements legislation (ESHB 1899 -2009).
Nursing Care Quality Assurance Commission	WAC 246-840-XXX, Pain management. The Nursing Care Quality Assurance Commission is adding a new section(s) for management of chronic non cancer pain.	Implements legislation (ESHB 2876 -2010)

RULE-MAKING THAT WILL CONTINUE

Authority	Rule Title	Exemption Criteria
Nursing Care Quality Assurance Commission	WAC 246-841-XXX New Nursing Assistant rules recognizing training received by home care aides and medical assistants to apply toward nursing assistant certification.	Implements legislation (ESHB 2876 -2010)
Podiatric Medical Board	Chapter 246-922 WAC - pain management. The Podiatric Medical Board is amending the chapter to repeal existing pain management sections and adopt a new section(s) for management of chronic, noncancerous pain.	Implements legislation (ESHB 2876 -2010)
SBOH - Delegated to DOH	Chapter 246-290 WAC, Group A Public Water Systems, federal Lead and Copper Rule – Short-Term Revisions.	Necessary to meet federal requirements. SBOH delegated rulemaking to DOH.

Work on the following list of rules will be delayed until 2012.

SUSPENDED RULE-MAKING

Authority	Rule Title
Board of Hearing and Speech	WAC 246-828-XXX - Board of Hearing and Speech - Prohibiting the use of the title "audioprosthologist".
Board of Nursing Home Administrators	WAC 246-843-010, 070, 071, 073, 090, 093, 095, 230 and 231 - Board of Nursing Home Administrators - Application for Initial License and Endorsement.
Board of Occupational Therapy Practice	WAC 246-847-030 - Occupational therapists acting in a consulting capacity, WAC 246-847-055 - Initial application for individuals who have not practiced within the past four years, WAC 246-847-068 - Expired license, WAC 246-847-070 - Inactive credential, WAC 246-847-125 - Applicants currently licensed in other states or territories, WAC 246-847-XXX - Renewal for those that have not practiced in four years.
Board of Pharmacy	WAC 246-879-060 - Unauthorized sales. The Board of Pharmacy (Board) is considering amending the rule to allow an exception for pharmaceutical wholesalers to deliver veterinary drugs directly to livestock farmers under specific circumstances.
Board of Pharmacy	Chapter 246-873 WAC Pharmacy - hospital standards.
Chiropractic Quality Assurance Commission	WAC 246-808-150 - Commission approved continuing education: The Chiropractic Quality Assurance Commission (commission) will review the current continuing education (CE) requirements for Washington State licensed chiropractors.
Chiropractic Quality Assurance Commission	WAC 246-808-550 - Future Care Contracts Prohibited - Chiropractic Quality Assurance Commission (commission). Revising the current rule to clarify the requirements for future care contracts.
Dental Quality Assurance Commission	WAC 246-817-310 - Maintenance and retention of records and WAC 246-817-XXX creating a new section for content of dental treatment records.

SUSPENDED RULE-MAKING

Authority	Rule Title
Dental Quality Assurance Commission	WAC 246-817-510 Definitions, WAC 246-817-520 Supportive services that may be performed by registered dental assistants, WAC 246-817-525 Supportive services that may be performed by expanded function dental auxiliaries (EFDA's), WAC 246-817-540 Acts that may not be performed by registered dental assistants or noncredentialed persons, and WAC 246-817-545 Acts that may not be performed by expanded function dental auxiliaries (EFDA's) or noncredentialed persons.
DOH	WAC 246-790- 010, -050, -060, -065, -070, -080, -085, -090, -100, -120, -130 - amending Women, Infants and Children (WIC) Nutrition Program requirements for selecting authorized retailers, submitting food products for approval, and updating non-compliance sanctions and fines.
DOH	Chapter 246-102 WAC - Cancer Registry.
DOH	Clarification of chapter 246-247 WAC - Radiation Protection - Air Emission. One possible outcome could be development of a second chapter to separately address facilities subject to United States Nuclear Regulatory Commission rules versus Environmental Protection Agency rules for regulation of radioactive air emission sources.
DOH	WAC 246-650 Newborn Screening, Section 991: Specialty clinic support fee.
DOH	WAC 246-310-XXX - creating new section to establish rules for hospital acute care bed methodology.
DOH	Chapter 246-322 WAC - Revising and updating rules for private psychiatric and alcoholism hospitals.
DOH	WAC 246-836-130, 246-836-140, 246-836-150, 246-836-160, 246-836-170, 246-836-180, 246-836-200, Amending accreditation requirements for naturopathic medical educational institutions.
DOH	WAC 246-836-010 and WAC 246-836-210 amending existing sections and adding a new section to Naturopathic Physician rules to identify which nonsurgical cosmetic procedures are in Naturopathic scope of practice.
DOH	WAC 246-926-180 Amending Parenteral Procedures for Radiologic Technologists to clarify if the use of PICC lines and ports is within their scope of practice.
DOH	WAC 246-310-290 - Hospice services -- Standards and need forecasting method.
DOH	WAC 246-928-XXX - creating a new section to clarify the scope of practice regarding the administration of medications by respiratory therapists.
DOH	Amending WAC 246-836-080 – (Naturopathic Physicians) Continuing competency program.
DOH	WAC 246-928-442 - Acceptable continuing education for respiratory therapists.
Medical Quality Assurance Commission	WAC 246-919-430 - (Physicians) General requirements and WAC 246-918-172 - (Physician Assistants) creating a new section for Renewal general requirements.
Optometry Board	WAC 246-851-235 - Credits for cultural competency in clinical care.

SUSPENDED RULE-MAKING

Authority	Rule Title
Podiatric Medical Board	WAC 246-922-010 - amending to establish new definitions for podiatric physicians for prescribing orthotic devices; and adding a new section, WAC 246-922-550 - to establish standards for prescribing orthotic devices by podiatric physicians.
Veterinary Board of Governors	WAC 246-933-460 - Courses approved by the veterinary board.